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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

WESTWATER PRODUCTS, LLC, a Utah limited liability corporation,  Plaintiff,  v.  IDYLWILDE, INC., an Oregon corporation,  Defendant.	Civil Action No. 2:13-cv-00682-BCW  <b>COMPLAINT</b>  Magistrate Judge Brooke C. Wells  <b>Demand for Jury</b>
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**BACKGROUND**

WestWater Products, LLC (“WestWater”) is a Utah start-up company that develops, markets, and sells products for fly fishing. One of WestWater’s innovative products is the “Thingamabobber,” which is a fly fishing strike indicator. The Thingamabobber is protected by U.S. Patent No. 8,015,745 (the “’745 Patent”), the subject of the present lawsuit. A copy of the ’745 Patent is attached hereto as Exhibit A.

Fly fishermen fish with artificial lures that mimic flies. The fisherman ties a fly to the end of his fishing line, then “presents” the fly to the fish by casting the fishing line and the attached fly onto the water to lure fish into biting or “striking” the fly. When a fish strikes the

fly, the fisherman attempts to set the hook of the fly in the fish's mouth before the fish realizes that the fly is artificial and spits it out. However, it is often difficult for fishermen to detect when a fish initially strikes the fly because the fly may be under the surface of the water, or may be difficult to see due to movement of the water (as in a river), the size and coloring of the fly, and/or due to glare reflecting off of the water. Thus, fishermen will often use a "strike indicator" to make it easier to detect when a fish strikes the fly.

Strike indicators are objects that are attached to the fishing line several feet above the fly. Strike indicators float above the water and are typically colored to contrast the color of the water so that they are clearly visible to the fisherman. When a fish strikes the fly, the pull of the fish on the fishing line causes the strike indicator to move. When the fisherman sees the strike indicator move, he or she knows that a fish is striking the fly and that the hook needs to be set. Thus, strike indicators help fishermen to catch fish by signaling when a fish is striking the fly.

The Thingamabobber is a unique patented strike indicator that uses "trapped air" technology. The body of the Thingamabobber is a hollow, sealed plastic ball. A picture of the Thingamabobber is attached hereto as Exhibit B. The air sealed in the ball assures that the strike indicator floats. It also has a tab extending from the ball. The tab has a reinforced hole through it that is used to attach the Thingamabobber to the fishing line. The Thingamabobber is made so that it deforms when it impacts the water when it is cast. This feature helps to absorb the force of the impact of the strike indicator on the water, thereby decreasing the likelihood of startling or "spooking" fish that may be near the place where the Thingamabobber lands on the water.

Defendant Idylwilde, Inc. ("Idylwilde" or "Defendant") markets and sells artificial flies for fly fishing and related products, including strike indicators. Idylwilde was a distributor that

carried WestWater's Thingamabobber strike indicator. After a time, however, Defendant stopped purchasing the Thingamabobber from WestWater and instead began importing and selling an identical knockoff product called the "Sindicator." The Sindicator infringes at least claim 1 of the '745 Patent.

In view of the foregoing information and as further set forth below, Plaintiff WestWater Products, LLC alleges claims against Defendant Idylwilde, Inc. as follows:

### **THE PARTIES**

1. WestWater Products, LLC is a Utah limited liability company engaged in the development and sale of fly fishing products, with its principle place of business at 132 West 1800 North, Pleasant Grove, Utah 84062.

2. Idylwilde, Inc. markets and sells fly fishing product and has a principle place of business at 9525 Northeast Colfax, Portland, Oregon 97220.

### **NATURE OF THE ACTION**

3. This is a civil action for infringement of the '745 Patent by Defendant. Defendant's Sindicator products literally infringe at least claim 1 of the '745 Patent under Title 35 U.S.C. §§ 271, 281, 283, 284 and 285.

### **JURISDICTION AND VENUE**

4. This Court has original jurisdiction over the patent infringement claims in this Action under 28 U.S.C. §§ 1331 and 1338(a). This Court has diversity jurisdiction over all claims asserted in this action pursuant to 28 U.S.C. §1332, because WestWater is a citizen of Utah, and on information and belief, Defendant is a citizen of Oregon, and the amount in controversy exceeds the jurisdictional amount of \$75,000, excluding interest and costs.

5. On information and belief, Defendant has transacted business, contracted to supply goods including the Sindicador products accused of infringing the claims of the '745 Patent, and caused injury within the state of Utah, and has otherwise purposely availed itself of the privileges and benefits of the laws of the state of Utah, and is therefore subject to personal jurisdiction in this Court pursuant to Fed.R.Civ.P. 4(k)(1)(A) and § 78B-3-205, Utah Code Ann.

6. Venue is proper in this Court under 28 U.S.C. §1391(b)(2) because WestWater is domiciled in Utah, and Defendant has committed acts of patent infringement and has otherwise regularly conducted or conducts business within Utah.

### **GENERAL ALLEGATIONS**

7. WestWater markets and sells an innovative fly fishing strike indicator called the “Thingamabobber” that employs WestWater’s “trapped air” technology, a picture of which is attached hereto as Exhibit B.

8. The Thingamabobber is covered by the '745 Patent, a copy of which is attached hereto as Exhibit A. The packaging of the Thingamabobber was marked as “Patent Pending” during the pendency of the application that resulted in the '745 Patent, and was marked with the patent number of the '745 Patent shortly after it was issued by the U.S. Patent and Trademark Office.

9. Idylwilde was a distributor that carried and sold the Thingamabobber. On information and belief, Idylwilde knew that WestWater the Thingamabobber was marked “patent pending” during the time it carried and sold the Thingamabobber.

10. Idylwilde, however, became disgruntled with WestWater because WestWater refused to provide a different WestWater product, called the Unibobber, to Idylwilde due to an

exclusive agreement WestWater had previously entered into with another third party for the Unibobber. Idylwilde subsequently stopped carrying the Thingamabobber altogether, and instead began to market and sell its knockoff Sindicator strike indicator. A picture of the Sindicator product is attached hereto as Exhibit C.

11. On information and belief, Idylwilde knows that the patent application filed on the Thingamabobber was issued by the U.S. Patent and Trademark Office, and that the Thingamabobber is now patented. Nonetheless, Idylwilde continues to literally infringe the '745 Patent by marketing and selling its Sindicator product.

**CLAIM ONE**

**(Willful Patent Infringement)**

12. WestWater hereby incorporates the allegations of the preceding paragraphs of this Complaint as though fully set forth hereat.

13. WestWater owns all rights and title to the '745 Patent by assignment, including the right to sue for past damages.

14. Idylwilde's Sindicator product infringes at least claim 1 of the '745 Patent.

15. The Sindicator is comprised of a permanently sealed sphere that contains air, which is a fluid.

16. The Sindicator also comprises a tab protruding from the sphere, the tab having an opening therethrough, as shown in Exhibit C.

17. The sphere and the tab of the Sindicator are a unitary structure formed of the same plastic material.

18. When the Sindicador strikes the water during casting, the sphere temporarily deforms, thereby dissipating some of the energy of its impact with the water.

19. A picture showing the deformation of a Sindicador as it impacts water is attached hereto as Exhibit D.

20. The Sindicador also comprises a metal ring inside the opening of the tab, as shown in Exhibit C. The metal ring is harder than the plastic material of the tab.

21. Upon information and belief, Idylwilde had actual notice that the Thingamabobber is covered by the '745 Patent, and despite such notice continues to willfully, wantonly, and deliberately infringe the claims of the '745 Patent without regard to WestWater's patent rights, and will continue to do so unless enjoined by this Court.

22. WestWater has been and will continue to be damaged by the infringing conduct of Idylwilde in an amount to be established at trial.

23. Further, the harm to WestWater arising from acts of infringement of the '745 Patent by Idylwilde is not fully compensable by money damages, but rather, results in irreparable harm to WestWater.

### **PRAYER FOR RELIEF**

WHEREFORE, WestWater prays for entry of a final order and judgment against Idylwilde that:

1. Idylwilde is liable for infringement of the '745 Patent;
2. Idylwilde, its officers, agents, servants, employers and attorneys, and all other persons in active concert or participation with them be permanently enjoined from further infringing the '745 Patent;

3. Idylwilde deliver up for destruction all infringing Sindicador or like products that infringe the '745 Patent;
4. Idylwilde pay to WestWater its damages, and that such damages be trebled in view of the willful and deliberate nature of Idylwilde's infringement of the '745 Patent;
5. This case be declared an exceptional case, and that WestWater be awarded its attorneys' fees;
6. Awards WestWater its costs of suit to the fullest extent permitted by law; and
7. WestWater be granted such other and further relief as the Court may deem just and proper under the circumstances.

**DEMAND FOR JURY TRIAL**

WestWater demands that all issues of fact in the Complaint be tried by jury.

DATED this 23<sup>rd</sup> day of July, 2013.

WORKMAN NYDEGGER

By /s/Chad E. Nydegger  
CHAD E. NYDEGGER

Attorney for WestWater Products, LLC